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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

<p>DREAM BIG MEDIA, INC., GETIFY SOLUTIONS, INC., and SPRINTER SUPPLIER LLC, Individually and on Behalf of all Others Similarly Situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>ALPHABET INC. and GOOGLE LLC,</p> <p>Defendants.</p>	<p>Case No.: 22-cv-02314-JWS</p> <p>PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO STRIKE CLASS ALLEGATIONS</p> <p>Date: September 30, 2022 Time: 9:00 a.m. Judge: Hon. Jeffrey S. White</p> <p>ORAL ARGUMENT REQUESTED</p>
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## **I. INTRODUCTION**

The Court should deny Defendants' improper attempt to circumvent Federal Rule of Civil Procedure ("Rule") 23 with its baseless Motion to Strike Class Action Allegations (ECF No. 29 ("Motion to Strike Class")).<sup>1</sup> Plaintiffs and other Class members have been directly harmed by Defendants' anticompetitive practices, including, without limitation, tying (negative and positive), bundling, exclusive dealing, self-preferencing, monopolization, and attempted monopolization, in connection with products through Google Maps' digital-mapping application programming interfaces ("APIs"), including Maps APIs, Routes APIs, and Places APIs, and other products and services. In essence, Defendants force Plaintiffs and other Class members who use any type of Google Maps digital mapping APIs in one of the relevant products markets, which are Maps APIs, Routes APIs, and Places APIs, to only use Google Maps APIs in all of the separate, relevant product markets, especially to the exclusion of using any competitors' digital mapping APIs in the relevant product markets.

The main tying product is Google Maps' Maps APIs, and the tied products are Google Maps' Routes APIs and Google Maps' Places APIs; once Plaintiffs and other Class members use Google Maps' Maps APIs to form the base of a digital map, Defendants' terms of service ("TOS") and their pattern and pervasive practice prohibit users from using any Routes APIs or Places APIs from competitors to embed onto or use in conjunction with their digital map, despite the preference of Plaintiffs and other Class members to use competitors' Routes APIs or Places APIs which are significantly cheaper (some even for free) and of comparable, if not better, quality. And if Plaintiffs and other Class members want to use Google Maps' Routes APIs or Places APIs without using Google Maps' Maps APIs, they cannot; they must use Google Maps' Maps APIs. The proposed Class remains specific and ascertainable, and the Court should deny Defendants' Motion to Strike Class.

First, the Court should deny the Motion to Strike Class because it is premature where Plaintiffs and Defendants have neither commenced discovery nor have Plaintiffs sought class certification. As this Court has noted on several occasions, arguments to strike class allegations,

<sup>1</sup> All ¶ references herein are to the Complaint, and any terms not defined herein have the meanings defined in the Complaint.

1 similar to the arguments that Defendants present in the Motion to Strike Class, are more properly  
 2 conducted after discovery, as the form of class evolves only through the process of reviewing  
 3 evidence related to Plaintiffs' claims and Defendants' defenses. The Court should deny the Motion  
 4 to Strike Class as premature and allow the case to proceed to discovery and a motion for class  
 5 certification.

6 Second, the Court should deny the Motion to Strike Class because the Class only includes  
 7 those with standing under Article III of the United States Constitution ("Article III") and antitrust  
 8 standing. Plaintiffs have specified that the proposed Class includes only *direct victims*; indeed,  
 9 Plaintiffs were precise enough to specifically allege that indirect users are not in the proposed Class.  
 10 As defined, Plaintiffs' proposed Class includes developers and other direct users who have  
 11 *purchased* Google Maps' Maps APIs, Routes APIs, or Places APIs, creating a cognizable antitrust  
 12 injury. And even those who have had their free credits depleted more rapidly because of Google's  
 13 anticompetitive practices have a cognizable injury, as those are assets and provide rights owned  
 14 and then lost by Plaintiffs and other Class members--if they were not assets and provided no rights,  
 15 there would have been no reason for Google Maps to have offered them, which also creates a  
 16 cognizable antitrust injury. And Defendants do not even address the fact that Plaintiffs seek  
 17 injunctive and declaratory relief for the Class.

18 Third, Plaintiffs have properly proposed a Class that includes direct users injured by  
 19 Defendants' anticompetitive practices, which is not a "fail-safe" class. Instead, Plaintiffs have  
 20 defined the Class that only seeks to include developers or other direct users who have purchased or  
 21 used the Maps APIs, Routes APIs, and Places APIs--these are readily ascertainable members of  
 22 the proposed Class. Moreover, the Ninth Circuit even disapproves of the premise that a class can  
 23 be "fail-safe," and this Court has also certified classes with "fail-safe" definitions. Plaintiffs have  
 24 properly proposed a Class that includes direct users injured by Defendants' anticompetitive  
 25 practices.

26 It is extremely telling that nowhere in the Motion to Strike Class nor the Motion to Dismiss  
 27 do Defendants argue that (i) Plaintiffs do not have Article III standing nor suffered antitrust injury,  
 28 (ii) there was an insubstantial foreclosure of competition, (iii) an insubstantial volume of commerce

1 was affected, (iv) any purported procompetitive justifications that outweigh alleged anticompetitive  
 2 harms, nor (v) the alleged unlawful activity did not cause antitrust harm. And, without mention,  
 3 Defendants side-step the injunctive and declarative angle of the Class relief sought. Nor are they  
 4 permitted to raise those arguments, at this point, in reply briefing. *Dytch v. Yoon*, 2011 WL 839421,  
 5 at \*3 (9th Cir. Mar. 7, 2011) (parties cannot raise new issue for the first time in their reply);  
 6 *Cytokinetics, Inc v. Pharm-Olam Intl., Ltd.*, 2015 WL 1056324, \*4 (N.D. Cal. Mar. 10, 2015).  
 7 Should they take issue with the precise definition or working of the proposed Class, those disputes  
 8 must be addressed during the class-certification briefing—and at the very least —after the benefit  
 9 of discovery.

10 **II. STATEMENT OF ISSUES**

11 1. Should Plaintiffs' class action allegations be stricken?

12 **III. STATEMENT OF FACTS**

13 Together, Plaintiffs and the Class have paid for Google Maps' Maps APIs, Routes APIs,  
 14 and Places APIs at inflated prices or had their free-credit tiers consumed more rapidly because of  
 15 the inflated prices resulting from the Defendants' anticompetitive activity. ¶¶2, 28-31, 33-38, 40-  
 16 42, 46, 48, 74-76, 122, 232-34. Direct victims of the alleged anticompetitive schemes are the Class  
 17 members identified herein: those who have directly purchased Maps APIs, Routes APIs, or Places  
 18 APIs, or those who have directly had their free credits—provided by Google Maps—consumed  
 19 more rapidly. ¶11. Plaintiffs were even precise to “specifically exclude [from the Class] indirect  
 20 purchasers, app or website developers, or other types of users who have purchased Maps APIs,  
 21 Routes APIs, or Places APIs from a more-direct purchaser to Defendants that did *not* pass on all of  
 22 the purchase price or free-tier credits to the app or website developers or other types of users.” ¶48

23 During the Class Period, Plaintiffs used Google Maps' Maps APIs and through the  
 24 anticompetitive negative and positive tying, bundling, and exclusive dealing, they were forced to  
 25 use Google Maps' other digital-mapping APIs and could not use other providers' digital-mapping  
 26 APIs—e.g., Routes APIs and Places APIs. *Id.* The main tying product is Google Maps' Maps APIs,  
 27 and the tied products are Google Maps' Routes APIs and Google Maps' Places APIs; once Plaintiffs  
 28 and other Class members use Google Maps' Maps APIs to form the base of a digital map,

1 Defendants' TOS and their pattern and pervasive practice prohibit users from using any  
 2 competitors' Routes APIs or Places APIs to embed onto or use in conjunction with the digital map,  
 3 despite the preference of Plaintiffs and other Class members to use competitors' Routes APIs or  
 4 Places APIs that are significantly cheaper (some even for free) and of comparable, if not better,  
 5 quality. ¶¶12, 153-63. And if Plaintiffs and the Class want to use Google Maps' Routes APIs or  
 6 Places APIs without using Google Maps' Maps APIs, they cannot; they must use Google Maps'  
 7 Maps APIs. *Id.* These costs often skyrocket for Plaintiffs and other Class members and are often  
 8 beyond their control because Google Maps does not permit caching, and there is a charge each time  
 9 a digital map is accessed, reloads, refreshes, and used. ¶8.

10 **A. Defendants' Antitrust Damage to Plaintiffs and Other Class Members Include Price  
 11 Increases and Credit Depletion.**

12 The substantial foreclosure of competition resulting from the tying (negative and positive),  
 13 bundling, exclusive dealing, self-preferencing, monopolization, and attempted monopolization has  
 14 affected a substantial volume of commerce. ¶¶120-21, 128, 197-98, 223-24, 255, 270-71. The  
 15 anticompetitive practices have resulted in concrete damages to Plaintiffs and other Class members,  
 16 in part through staggering price hikes and more-rapid consumption of free-tier credits for Google  
 17 Maps' Maps APIs, Routes APIs, and Places APIs. ¶¶18, 122. According to a recent report by the  
 18 U.S. House Committee on the Judiciary, Subcommittee on Antitrust, Commercial and  
 19 Administrative Law ("House Antitrust Subcommittee") that was released on October 6, 2020,  
 20 entitled "Investigation of Competition in Digital Markets-Majority Staff Report and  
 21 Recommendations" ("House Antitrust Proposals"), developers have told the House Antitrust  
 22 Subcommittee that ever since Google Maps enforced unexpected and drastic pricing changes  
 23 around 2018, the change amounted to a price increase of 1,400%. ¶¶20, 208. A market participant  
 24 told the House Antitrust Subcommittee that Google instituted this price hike after "gaining  
 25 dominance." ¶¶20, 209. Since becoming a Google Maps customer, a market participant's costs  
 26 "have increased over 20x[.]" *Id.* A developer in the House Antitrust Proposals stated that the 2018  
 27 pricing change "took our bill from \$90/month in October to \$20,000/month in December." ¶210.  
 28 Other developers similarly expressed their frustrations, noting that Google Maps' decision to hike

1 prices so sharply and without significant notice underscored its power to set the terms of commerce.

2 ¶211.

3 **B. Defendants' Antitrust Damage to Plaintiffs and Other Class Members Include Other**  
**Anticompetitive Harm**

4 Defendants' conduct harms Plaintiffs and other Class members by depriving them of valid  
5 competitive choice, degrading privacy, degrading quality and variety of products and services  
6 offered, and stifling innovation. ¶198. These additional categories of anticompetitive harm have  
7 damaged Plaintiffs and other Class members, rendering the Class to be an effective mechanism to  
8 seek declarative and injunctive relief—which Defendants ignore in their motions and briefing. ¶¶2,  
9 122, 226, 236, 245, 263, 277, 286, 295. As a result of the anticompetitive conduct, Defendants have  
10 foreclosed other firms from competing in the relevant products markets of Maps APIs, Routes APIs,  
11 and Places APIs —and even cloud computing—to the detriment of Plaintiffs and other Class  
12 members. ¶199. Defendants' conduct goes far beyond “aggressive competition.” ¶197. Their  
13 anticompetitive actions intend to and, in fact, have excluded rivals and harmed the competitive  
14 process. *Id.* This conduct is not competition on the merits, or even otherwise privileged. *Id.* Even  
15 worse, the conduct has been planned and thoroughly executed over many years—it is willful. *Id.*

16 There would be no confusion to the end user about the source of the digital-mapping  
17 information because Plaintiffs and other Class members can seamlessly display on a digital map  
18 the source of which APIs come from which competitors. ¶188. Developers, users, and mapping  
19 providers, including Plaintiffs, have questioned Google Maps' purported quality and confusing  
20 rationales to continue their anticompetitive tying of APIs, noting that developers are best positioned  
21 to determine whether combining APIs from multiple providers creates a “negative user  
22 experience.” ¶192. One provider added, debunking Defendant's rationale, that the “developers we  
23 partner with are extremely sophisticated. They're not confused.” *Id.*

24 Even with an ever-increasing stranglehold and strict control over Maps APIs, Routes APIs,  
25 and Places APIs, Defendants have done an abysmal—if not intentional or reckless—job of  
26 maintaining quality and accurate business-mapping features. ¶¶23, 186. The Antitrust House  
27 Subcommittee emphasized this phenomenon:

Although Google’s responses to the Subcommittees’ questions about its conduct regarding Google Maps emphasized “quality” and “user experience,” ... public reporting has documented that Google Maps’ listings are “overrun with millions of false business addresses and fake names.” ... A survey of experts conducted by the Wall Street Journal estimated that Google Maps hosts around 11 million falsely listed businesses on any given day. ... The same experts stated that “a majority” of the listings ... are not actually located at the location given by Google Maps.

These fake listings endanger consumer safety, giving rise to situations where users of Google Maps have unknowingly requested home repairs and other services from fraudulent providers, ultimately, paying inflated prices for shoddy work. ... The fraudulent listings also disadvantage legitimate businesses[.]

Legitimate businesses hurt by fake listings say that contacting Google to report the situation generally fails to resolve the problem. In practice, the only ways legitimate businesses can shield themselves from fake listings is to buy ads from Google. Ad prices for categories that are most susceptible to ad fraud have increased more than 50% over the last two years.

10

Both digital advertisement experts and individuals engaging in fraudulent activity believe that Google has turned a blind eye to the problem. According to the Wall Street Journal, one ad specialist who was invited by Google to help root out the problem left after concluding that Google “has obviously chosen not to solve the problem.” ... A business owner who helps facilitate the fake listings says his activity leaves a “huge footprint” and yet Google is “just letting it happen.” He added, “I know Google knows.”

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[A] 67-year-old-woman contacted a local home repair service she found through Google, only to be serviced by a man who was pretending to be from the company she had hired. The man charged almost twice the cost of previous repairs and demanded a personal check or cash. The woman told the *Wall Street Journal*, “I’m at my house by myself with this guy. He could have knocked me over dead.”

¶191, 221.

In addition to Google Maps' quality issues, the Defendants' Maps APIs, Routes APIs, and Places APIs do not even offer a full suite of APIs: there are bodies of APIs and other data within these relevant products markets that Google Maps does not offer, that competitors and the direct users themselves can provide, but that Plaintiffs and other Class members cannot access these needed bodies of APIs because of Defendants' anticompetitive negative and positive tying, bundling, exclusive dealing, monopolization, and attempted monopolization. ¶¶25, 190.

1       Moreover, Plaintiffs and other Class members would benefit from having back-up digital-  
 2 mapping data through other competitors providing Maps APIs, Routes APIs, and Places APIs in  
 3 addition to Google Maps, especially when its servers freeze or shut down, which has happened  
 4 recently. ¶189. For example, around March 2022, Google Maps nearly experienced a complete  
 5 world-wide failure and outage that lasted several hours, leaving the Class powerless to display their  
 6 digital maps. *Id.* Having back-up data also would enable Plaintiffs and other Class members to truly  
 7 experiment which competitor provides the highest-quality data. ¶189.

8       **C. Defendants Ignore Plaintiffs' Well-Pled, Detailed Factual Allegations**

9       It is extremely telling that nowhere in the Motion to Strike Class nor the Motion to Dismiss  
 10 do Defendants argue that (i) Plaintiffs do not have Article III standing nor suffered antitrust injury,  
 11 (ii) there was an insubstantial foreclosure of competition, (iii) an insubstantial volume of commerce  
 12 was affected, (iv) any purported procompetitive justifications that outweighed alleged  
 13 anticompetitive harms, nor (v) the alleged unlawful activity did not cause antitrust harm. And,  
 14 without mention, they side-step the injunctive and declarative angle of the Class relief sought.  
 15 Besides the improper procedural posture for them to attempt to first argue these points on reply  
 16 briefing, *Dytch v. Yoon*, 2011 WL 839421, at \*3 (9th Cir. Mar. 7, 2011) (parties cannot raise new  
 17 issue for the first time in their reply); *Cytokinetics, Inc v. Pharm-Olam Intl., Ltd.*, 2015 WL  
 18 1056324, \*4 (N.D. Cal. Mar. 10, 2015), they cannot substantively overcome Plaintiffs' well-pled  
 19 allegations that together, during the Class Period, Plaintiffs have Article III and antitrust standing  
 20 to represent the Class of direct users of Google Maps' Maps APIs, Routes APIs, and Places APIs  
 21 who paid the inflated APIs prices or had their free credit tiers consumed more rapidly because of  
 22 Defendants' inflated prices. ¶¶2, 28-31, 33-38, 40-42, 46, 48, 74-76, 122, 232-34.

23       Plaintiff Dream Big Media Inc. ("Dream Big Media") has used and paid for Google Maps'  
 24 APIs (for example, Routes APIs) and due to the anticompetitive conduct alleged herein, was forced  
 25 to use Google Maps' Maps APIs, Routes APIs, or Places APIs and other Defendants' products or  
 26 services that it otherwise would not have used, and Dream was foreclosed by Defendants'  
 27 anticompetitive conduct from using competing providers' Maps APIs, Routes APIs, or Places APIs,  
 28

1 nor mixing and combining Google Maps' Maps APIs, Routes APIs, or Places APIs with  
 2 competitors' Maps APIs, Routes APIs, or Places APIs. ¶¶28-31, 232, 300.

3 Plaintiff Getify Solutions, Inc. ("Getify") has used Google Maps' Maps APIs, Routes APIs,  
 4 and Places APIs in developing an app called RestaurNote that was intended to be free for its  
 5 customers, having expended significant time, effort, and costs to do so. ¶¶33-38, 233. Defendants'  
 6 anticompetitive conduct forced Getify to use Google Maps' Maps APIs, Routes APIs, and Places  
 7 APIs, to the exclusion of using its competitors' Maps APIs, Routes APIs, and Places APIs in  
 8 conjunction on the same digital map on its app. ¶¶33-38, 233. Ever since the change in the free-tier  
 9 and pricing structure enforced by Defendants in the summer of 2018, Getify's free-tier credits have  
 10 been exhausted, and the pricing structure renders Getify's newly created app RestaurNote  
 11 unfeasible for public use to customers outside of close friends and family. ¶¶33-38, 233.

12 Plaintiff Sprinter Supplier LLC ("Sprinter") is an automotive parts store and, during the  
 13 pandemic, began offering personal-protective equipment to distribute to frontline essential workers,  
 14 and its digital presence for both businesses depended crucially on Maps APIs, Routes APIs, and  
 15 Places APIs. ¶¶40-42. In response to Defendants' staggering prices for Google Maps' Maps APIs,  
 16 Routes APIs, and Places APIs, Sprinter researched and found competing providers of Maps APIs,  
 17 Routes APIs, and Places APIs that were of at least comparable quality and were free or significantly  
 18 cheaper in price. ¶¶40-42. But because of Defendants' anticompetitive conduct alleged herein,  
 19 Sprinter was forbidden from using the competitors' Maps APIs, Routes APIs, or Places APIs in  
 20 combination with Defendants' Google Maps' Maps APIs, Routes APIs, and Places APIs, forcing  
 21 it to only use Defendants' Google Maps' Maps APIs, Routes APIs, and Places APIs, along with  
 22 being forced to use Defendants' other products or services, with the costs for Defendants' products  
 23 quickly having become concerning. ¶¶40-42. Sprinter's free credits were quickly eaten up and  
 24 depleted. ¶42. For example, in early February 2020, Sprinter experienced a charge of \$5.74,  
 25 depleting a credit balance that Google Maps had provided—indeed, it is even unclear given  
 26 Defendant's reporting whether the credit balance handled this charge. ¶234.

27 **IV. LEGAL STANDARD**

28 Federal Rule of Civil Procedure ("Rule") 23 provides that a court may "require that the

1 pleadings be amended to eliminate allegations about representation of absent persona and that the  
 2 action proceed accordingly.” Fed. R. Civ. P. 23(d)(1)(D). But class allegations are not tested at the  
 3 pleading stage and are instead more properly scrutinized after a party has filed a motion for class  
 4 certification. *Yastrab v. Apple Inc.*, 2015 WL 1307163, at \*8 (N.D. Cal. Mar. 23, 2015). In fact, the  
 5 ‘rigorous analyses of class certification rulings require discovery and development of the record.’  
 6 *Perkins v. LinkedIn Corp.*, 53 F. Supp. 3d 1190, 1221 (N.D. Cal. 2014). Thus, motions to strike are  
 7 regarded premature because they are often used solely to delay proceedings. *Capella Photonics, Inc. v. Cisco Sys., Inc.*, 77 F. Supp. 3d 850, 858 (N.D. Cal. 2014). As with motions to dismiss, the  
 8 Court must view the motion to strike “in the light more favorable” to the plaintiff. *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 301 F.R.D. 487, 489 (C.D. Cal. 2014) (citations omitted).

12 **V. ARGUMENT**

13 **A. DEFENDANTS’ MOTION TO STRIKE CLASS IS PREMATURE AND SHOULD  
 14 BE DENIED**

15 Defendants’ Motion to Strike Class is premature and should be denied. Motions to strike  
 16 class allegations are premature when discovery has not commenced and no motion for class  
 17 certification has been filed. *Velasquez v. HSBC Fin. Corp.*, 2009 WL 112919, at \*4 (N.D. Cal. Jan.  
 18 16, 2009). In fact, motions to strike class allegations are disfavored because a motion for class  
 19 certification is a “more appropriate” vehicle for arguments related to a proposed class. *Thorpe v. Abbott Labs., Inc.*, 534 F. Supp. 2d 1120, 1125 (N.D. Cal. 2008). Class actions are governed by  
 20 Rule 23, not Rule 12(b)(6), and a Rule 23 analysis is more properly conducted after discovery and  
 21 upon a motion for class certification. *Yastrab v. Apple Inc.*, 2015 WL 1307163, at \*8 (N.D. Cal.  
 22 Mar. 23, 2015) (denying motion to strike class allegations under Rule 23 as premature). Indeed,  
 23 dismissal of class allegations at the pleading stage is rare because the shape and form of a class  
 24 action evolves only through the process of discovery, none of which has taken place in this action.  
 25 *In re Wal-Mart Stores, Inc. Wage and Hour Litig.*, 505 F. Supp. 2d 609, 615 (N.D. Cal. 2007).  
 26 Here, Defendants’ have requested that the Court strike Plaintiffs’ class allegations without any  
 27 discovery or any briefing on class certification. Only during discovery would the parties learn  
 28 evidence related to Plaintiffs’ claims and Defendants’ defenses. Therefore, the Court should deny

1 Defendants' Motion to Strike Class as premature and allow the case to proceed to discovery and a  
 2 motion for class certification.

3 Demonstrating the slapdash, premature nature of Defendants' attempt to short-circuit this  
 4 Class without the benefit of any discovery or even a motion for class certification, Defendants in  
 5 their Motion to Strike Class, and even Motion to Dismiss, wholly ignore and thus concede at this  
 6 stage that Plaintiffs have alleged each of the following:

- 7 (i) Article III standing and antitrust injury;
- 8 (ii) The Class is expressly limited to direct victims and specifically excludes indirect  
     victims;
- 9 (iii) Plaintiffs and the Class include members who have paid artificially inflated prices  
     for Google Maps' Maps APIs, Routes APIs, and Places APIs that allegedly resulted  
     from the anticompetitive actions; and
- 10 (iv) Plaintiffs and the Class seek injunctive and declarative relief.

11 These uncontested points alone should dispatch Defendants' attempt to entirely crater the proposed  
 12 Class without any discovery or even a motion for class certification. In fact, Plaintiffs limit the  
 13 proposed Class to "direct victims," and specifically exclude the indirect victims raised in  
 14 Defendants' hypothetical third-party developers. Under Plaintiffs' definition, a third-party  
 15 developer hired by a business owner to create a website and who used a Google Maps API would  
 16 not be considered a member of the Class if the owner paid for or received Google credits and did  
 17 not pass them fully to the third-party developer. Indeed, even if Plaintiffs' proposed Class is  
 18 potentially "over-inclusive", the class should be solved by refining the class definition rather than  
 19 by flatly denying *class certification* on that basis. *Olean Wholesale Grocery Coop., Inc. v. Bumble*  
 20 *Bee Foods LLC*, 31 F.4th 651, 669 n.14 (9th Cir. 2022).

21 Moreover, Defendants use authority that is inapposite to Plaintiffs' allegations. In *Bruton v.*  
 22 *Gerber Prods. Co.*, the parties spent "significant time and money litigating" over the span of years,  
 23 whereas this Class Action has no procedural history other than Defendants' two dispositive  
 24 motions. 2018 WL 4181903, at \*6 (N.D. Cal. Aug. 31, 2018). Further, in *Brazil v. Dell Inc.*, the  
 25 Court granted Plaintiffs leave to amend the complaint because it determined that Texas, not

1 California law applied, to any fail-safe class allegations. 2008 WL 2693629, at \*7 (N.D. Cal. July  
 2 7, 2008). And in *Morgan v. FedEx Corp.*, the Court granted a motion to strike class allegations because  
 3 the Court lacked subject matter jurisdiction where the plaintiff failed to bring administrative charges.  
 4 2009 WL 10736798, at \*4 (N.D. Cal. Dec. 17, 2009).

5 Defendants' Motion to Strike Class is premature and should be denied.

6 **B. PLAINTIFFS' PROPOSED CLASS, WHO SUFFERED ANTITRUST INJURY,  
 7 ONLY INCLUDES THOSE WITH ARTICLE III STANDING**

8 Plaintiffs' proposed Class only includes those with Article III standing. To constitute an  
 9 ascertainable class with Article III standing, class members must have suffered an injury. *Sanchez*  
 10 *v. L.A. Dept. of Transp.*, 39 F.4<sup>th</sup> 548 (9<sup>th</sup> Cir. 2022) (collection of real-time location data of scooters  
 11 was sufficient injury to confer Article III standing); *Klein v. Facebook, Inc.*, 2022 WL 141561, at  
 12 \*39 (N.D. Cal. Jan. 14, 2022) (finding antitrust standing where putative class members alleged that  
 13 anticompetitive conduct caused them damages without having spent any money). Cognizable  
 14 antitrust injury includes harm to a plaintiff's "business or property." 15 U.S.C. § 15. "Property" is  
 15 a "broad and inclusive" term that includes "anything of material value owned or possessed." *Reiter*  
 16 *v. Sonotone Corp.*, 442 U.S. 330, 338, (1979). Plaintiffs proposed Class only includes those with  
 17 Article III and antitrust standing because they have directly suffered injury as a result of Google's  
 18 anticompetitive practices.

19 Plaintiffs and the Class suffered an antitrust injury because they paid Google Maps' inflated  
 20 Maps APIs, Routes APIs, and Places APIs prices or had their free-credit tiers consumed more  
 21 rapidly because of the inflated prices. ¶¶2, 28-31, 33-38, 40-42, 46, 48, 74-76, 122, 232-34. The  
 22 proposed Class used Google Maps' Maps APIs and through the anticompetitive tying, negative  
 23 tying, bundling, and exclusive dealing, they were forced to use Google Maps' other digital-mapping  
 24 APIs or could not use other providers' digital-mapping APIs—for example, Routes APIs and Places  
 25 APIs. *Id.* These costs skyrocketed for the Class and are often beyond their control because Google  
 26 Maps does not permit caching, which would only charge once per user, but, instead, there is a  
 27 charge each time a digital map is accessed, reloads, refreshes, and used. ¶8. Defendants'  
 28 anticompetitive practices have resulted in concrete damages to every member of the Class, in part  
 through staggering price hikes and more-rapid consumption of free-tier credits (the value for which

1 can easily be determined based on the corresponding prices that Google Maps charges for the same  
 2 Maps APIs, Places APIs, and Routes APIs once the free-tier credits are depleted), for Google Maps'  
 3 Maps APIs, Routes APIs, and Places APIs. ¶¶18, 122. Plaintiffs proposed Class only includes those  
 4 with Article III and antitrust standing, which constitutes antitrust injury.

5 Instead of addressing Plaintiffs' Class allegations, Google now relies on inapposite  
 6 authority to argue that Plaintiffs' proposed Class lacks injury. In *Lyons v. Bank of Am., NA*, the  
 7 Court found that the proposed class definition, which sought to include unaffected mortgage  
 8 obligators in the class, included many members who had not been injured. 2011 WL 6303390, at  
 9 \*7 (N.D. Cal. Dec. 16, 2011). And in *Sanders v. Apple Inc.*, the Court concluded that the proposed  
 10 class definition, which sought to include all persons who owned (not purchased) an Apple  
 11 computer, also included many members who had been injured. 672 F. Supp. 2d 978, 991 (N.D. Cal.  
 12 2009). Neither of the cases apply here because Plaintiffs' proposed Class only includes those who  
 13 were "direct purchasers, app or website developers, or other [direct] types of users" who "spent  
 14 money or had their free-tier credits consume[d]" because of Google's anticompetitive practices,  
 15 and the Class also includes member seeking injunctive and declaratory relief. ¶46. Google's  
 16 authority is inapposite because, as defined, the proposed Class only encompasses those with  
 17 standing.

18 Even those members of the proposed Class who only received free-tier credits have standing  
 19 because the credits were an asset belonging to those Class members that inured them with benefits.  
 20 And thus, losing the asset that inured them with benefits (the value for which can easily be  
 21 determined based on the corresponding prices that Google Maps charges for the same Maps APIs,  
 22 Places APIs, and Routes APIs once the free-tier credits are depleted) because of Defendants'  
 23 anticompetitive practices constituted an injury in fact—if these were not assets and did not provide  
 24 any benefits to Plaintiffs and the Class, Defendants would not have offered them. In fact, this Court  
 25 has once already rejected Google's argument that there is no standing where the plaintiffs have not  
 26 "plausibly alleged that they 'lost money or property' as a result of Google's conduct." See *Brown*  
 27 *v. Google*, 2021 WL 6064009, at \*15 (N.D. Cal. Dec. 22, 2021). The Court rejected this argument  
 28

1 because it concluded that there is a cash value of the data which Google collected and quantified.

2 *Id.* Similarly, there is a cash value to Google's free-tier credits.

3 Indeed, numerous courts have recognized that plaintiffs who lose property for which they  
 4 did not "pay for" have suffered an economic injury. *See Calhoun v. Google LLC*, 526 F. Supp. 3d  
 5 605 (N.D. Cal. 2021) ("[T]he Ninth Circuit and a number of district courts, including this Court,  
 6 have concluded that plaintiffs who suffered a loss of their personal information suffered economic  
 7 injury and had standing."); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 2017 WL 3727318,  
 8 at \*13 (N.D. Cal. Aug. 30, 2017) (holding that plaintiffs had adequately alleged injury in fact based  
 9 on the loss of value of their personal information); *In re Anthem, Inc. Data Breach Litig.*, 2016 WL  
 10 3029783, at \*14 (N.D. Cal. May 17, 2016) (same). Thus, there is ample support for Plaintiffs'  
 11 argument that lost credits has material value. Defendants in arguing that such rapid consumption  
 12 of the free-tier credits due to the alleged anticompetitive activity does not constitute damage do not  
 13 cite any legal authority to support such a sweeping proposition. Plaintiffs have alleged that their  
 14 free-tier credits were exhausted as a result of the alleged anticompetitive activity. ¶¶28-31, 33-38,  
 15 40-42, 232-34, 300.

16 Plaintiffs' proposed Class only includes those with Article III standing who suffered  
 17 antitrust injury.

18 **C. PLAINTIFFS HAVE PROPERLY PROPOSED A CLASS THAT INCLUDES  
 19 USERS INJURED BY GOOGLE'S ANTICOMPETITIVE PRACTICES, WHICH IS  
 20 NOT A "FAIL-SAFE" CLASS**

21 Plaintiffs have properly proposed a Class that includes users injured by Google's  
 22 anticompetitive practices, which is not a "fail-safe" class. A fail-safe class is a class defined to  
 23 include only those individuals who will prevail against the defendant. *Kamar v. RadioShack Corp.*,  
 24 375 Fed. App'x. 734, 736 (9th Cir. 2010). That is not the case here. Instead, Plaintiffs bring this  
 25 action on behalf of themselves and under Rules 23(a), (b)(2), and (b)(3), a class of the following:

26 From April 13, 2018, through the date that the alleged unlawful anticompetitive  
 27 activity ceases, all direct purchasers, app or website developers, or other types of  
 28 users of Maps APIs, Routes APIs, or Places APIs, or direct purchasers, app or  
 website developers, or other types of users of Maps APIs, Routes APIs, or Places  
 APIs who spent money or had their free-tier credits consumed more rapidly because

1 of the anticompetitive allegations therein, or other types of users who continue to  
 2 experience anticompetitive harm as a result of the allegations herein.

3 ¶46. Here, the proposed Class only seeks to include developers or other direct users who have  
 4 purchased or used Google Maps' Maps APIs, Routes APIs, or Places APIs—a readily ascertainable  
 5 class. *Id.* Further, Plaintiffs have demonstrated the harm to its proposed Class. For example, Dream  
 6 Big Media paid for Google's digital-mapping APIs in the relevant products markets of Maps APIs,  
 7 Routes APIs, and Places APIs and has incurred additional fees because of Google's tying, negative  
 8 tying, bundling, exclusive dealing, monopolization, and attempted monopolization. ¶151. Plaintiffs  
 9 have properly proposed a Class that includes direct users injured by Google's anti-competitive  
 10 practices.

11 Moreover, the Ninth Circuit disapproves of the premise that a class can be "fail-safe."  
 12 *Melgar v. CSK Auto, Inc.*, 681 F. App'x 605, 607 (9th Cir. 2017). Google's argument ignores the  
 13 numerous district court decisions that have certified classes with "fail-safe" definitions. *Charlebois*  
 14 *v. Angels Baseball, LP*, No. SACV 10-0853 DOC (ANx), 2011 WL 2610122, at \*3 (C.D. Cal. June  
 15 30, 2011) (disability stadium access suit certifying a class consisting of persons who have or will  
 16 "be denied equal access to wheelchair accessible seating, amenities, privileges, services and  
 17 facilities of the Stadium on account of his/her disability."); *Gray v. Golden Gate Nat. Recreational*  
 18 *Area*, 279 F.R.D. 501, 502-03 (N.D. Cal. 2011) (disability suit certifying class of persons "who are  
 19 being denied programmatic access under the Rehabilitation Act of 1973 due to barriers at park  
 20 sites"); *Moeller v. Taco Bell Corp.*, 2012 WL 3070863, at \*1 (N.D. Cal. July 26, 2012) (noting  
 21 court previously certified class of disabled persons who were denied "full and equal enjoyment of  
 22 the goods, services, facilities, privileges, advantages, or accommodations of California Taco  
 23 Bell."). In light of the Ninth Circuit's disapproval of the fail-safe class concept and the district court  
 24 decisions certifying materially indistinguishable classes, the Court should reject Google's argument  
 25 that Plaintiffs' class definition is impermissibly fail-safe.

26 **VI. CONCLUSION**

27 The Court should deny Google's Motion to Strike, which is an improper attempt to  
 28 circumvent Rule 23 briefing. The answer to any lack of precise allegations in the Class definition—  
 without the benefit of any discovery nor a motion for class certification—is not to crater the entire

1 Class; instead, the benefit of discovery and a motion for class certification is the proper juncture  
2 for more precision in the Class definition.

3  
4 Dated: August 30, 2022  
5 New York, New York

6 */s/ Justin S. Nematzadeh*  
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